

**Report on Examination**  
**of**  
**St. Mark Village, Inc.**  
**Palm Harbor, FL**  
**as of**  
**December 31, 2016**



**FLORIDA OFFICE OF  
INSURANCE REGULATION**

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## **SCOPE OF EXAMINATION**

The Florida Office of Insurance Regulation (“Office”), Life & Health Financial Oversight unit, conducted a routine examination of St. Mark Village, Inc., pursuant to Section 651.105, Florida Statutes. The objective of the examination was to determine the extent of compliance with the provisions of Chapter 651, Florida Statutes, and Rule Chapter 69O-193, Florida Administrative Code. The examination covered the period of January 1, 2013 through December 31, 2016.

## **COMPANY HISTORY**

St. Mark Village, a Florida not-for-profit corporation was granted a certificate of authority by the Office to offer continuing care contracts on December 12, 1980. St. Mark Village operates a continuing care retirement community facility located in Palm Harbor, Florida. As of December 31, 2016, St. Mark Village reported: 372 Continuing Care Units comprised of 274 Independent Living Units and 98 Assisted Living Units; 80 Skilled Nursing Units comprised of 60 Community Beds and 20 Sheltered Beds; and 33 Rental Units. As of that date, there were 462 individuals reported residing at St. Mark Village: 402 pursuant to a continuing care agreement; 36 pursuant to a rental agreement; and 24 skilled nursing community patients (non-CCRC). St. Mark Village is self-managed and does not utilize an individual or entity to perform the functions of a “manager” or “management company”, as defined by Rule 69O-193.002(13), Florida Administrative Code.

## **SUMMARY OF SIGNIFICANT FINDINGS**

The following is a summary of material adverse findings and significant non-compliance findings. The findings are discussed in more detail in the pages that follow with recommendations beginning on page 10.

## CANCELATIONS AND REFUNDS

St. Mark Village provided a list of 165 continuing care contracts canceled during the scope period of the examination. A sample of 58 contract cancelations was selected and examined to verify the amount of the refund due, if any, and whether refunds were properly issued. Of the 58 cancelations selected for review, 16 were eligible for refunds.

### Finding:

Section 651.055(1)(h), Florida Statutes, provides in part that the continuing care contract provide the terms governing the refund of any portion of the entrance fee.

St. Mark Village failed to issue a refund in accordance with the terms of the approved continuing care contract, as required by Section 651.055(1)(h)1., Florida Statutes. Specifically, St. Mark Village issued a refund in the amount of \$10,200. Upon review of the continuing care contract and related documentation, the examination calculated the refund amount as \$20,400, a refund shortage of \$10,200.

## REQUIRED ESCROW DEPOSITS OR WAIVERS

St. Mark Village provided a list of 163 continuing care contracts executed during the scope period of the examination. A sample of 59 transactions was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

### Finding:

Section 651.055(2), Florida Statutes, provides in pertinent part that a resident has the right to rescind a continuing care contract within seven days after executing the contract and during this rescission period the resident's funds must be held in an escrow account unless the resident

requests the provider hold and not deposit the check during the seven-day period, pursuant to Section 651.033(3)(c), Florida Statutes.

In 22 instances, St. Mark Village failed to deposit resident funds into an approved escrow account for the seven-day rescission period of the continuing care contract or obtain authorization from the resident to hold and not deposit the check for the seven-day rescission period, as required by Section 651.055(2), Florida Statutes. In all instances the funds posted to the escrow account after the seven-day rescission period of the continuing care contract had expired.

#### REQUIRED DISCLOSURES

St. Mark Village provided a list of 163 continuing care contracts executed during the scope period of the examination. A sample of 59 transactions was selected and reviewed for compliance with Sections 651.055(4) and 651.091(3), Florida Statutes.

#### Finding 1:

Section 651.055(4), Florida Statutes, provides that before the transfer of any money or other property to a provider by or on behalf of a prospective resident, the provider shall present a typewritten or printed copy of the contract to the prospective resident and all other parties to the contract. The provider shall secure a signed, dated statement from each party to the contract certifying that a copy of the contract with the specified attachment, as required pursuant to this chapter, was received.

In three instances, St. Mark Village failed to timely provide, or provide documentation to establish that a copy of the continuing care contract was timely provided, to all parties to the contract prior to the transfer of money or property to the provider, as required by Section

651.055(4), Florida Statutes. Specifically, in one instance the resident signed the continuing care contract on July 23, 2013, the disclosure document receipt acknowledging the receipt of various required document disclosures, to include a copy of the continuing care contract, was signed on July 29, 2013. In the second instance, the residents did not sign the disclosure document receipt, and in the third instance the disclosure document receipt was signed by the residents, but not dated.

Finding 2:

Section 651.091(3), Florida Statutes, provides in pertinent part that before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of specific disclosure documents to the prospective resident or his or her legal representative.

In three instances, St. Mark Village failed to timely provide, or provide documentation to establish that the prospective resident or their legal representative were timely provided, the required disclosure documents, pursuant to Section 651.091(3), Florida Statutes. These instances regarded the same prospective residents and disclosure document detail described in Finding 1.

Finding 3:

Section 651.091(3), Florida Statutes, provides in pertinent part that before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of specific disclosure documents to the prospective resident or his or her legal representative, to include, all ownership interests and lease agreements, including information specified in Section 651.022(2)(b)8., Florida Statutes.

Section 651.022(2)(b)8., Florida Statutes, provides that any person whose name is required to be provided in the application and who owns any interest in or receives any remuneration from, directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of \$10,000 or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

St. Mark Village failed to provide a required disclosure to prospective residents or their legal representatives prior to their entering into a contract for continuing care, as required by Section 651.091(3)(c), Florida Statutes. Specifically, for continuing care contracts entered into during the calendar years 2013 through 2017, St. Mark Village failed to include the disclosure required pursuant to Section 651.022(2)(b)8., Florida Statutes, regarding a company owned and operated by a principal of St. Mark Village that provided goods and/or services to St. Mark Village in the amounts in excess of \$10,000 per each year respectively.

#### NEW FINANCING, ADDITIONAL FINANCING, OR REFINANCING

Information was obtained and reviewed related to new financing, additional financing and refinancing during the scope period of the examination to determine compliance with Section 651.019, Florida Statutes.

#### Finding:

Section 651.019(2), Florida Statutes, requires the provider to submit to the Office copies of executed financing documents within 30 days after the closing date.

St. Mark Village failed to provide to the Office copies of the executed financing documents within 30 days after the closing date of the transaction, as required by Section 651.019(2), Florida Statutes. Specifically, St. Mark Village closed on a financing transaction on December 31, 2015 and the related executed financing documents were submitted to the Office February 22, 2016.

QUARTERLY MEETINGS WITH RESIDENTS

The quarterly meeting minutes, notices to residents, agenda, and meeting dates contained in the Annual Reports filed with the Office during the scope period of the examination were reviewed for compliance with Section 651.085, Florida Statutes.

Finding 1:

Section 651.085(1), Florida Statutes, provides in pertinent part that the Annual Report required pursuant to Section 651.026, Florida Statutes, shall include the dates on which quarterly meetings with residents were held during the reporting period.

St. Mark Village failed to accurately report in the 2013, 2014, 2015 and 2016 Annual Reports filed with the Office the dates on which quarterly meetings with residents were held, as required by Section 651.085(1), Florida Statutes. The examination revealed that in all 16 instances (4 meetings per year) the dates the quarterly meetings with residents were held conflicted with the dates of the meetings reported in the 2013, 2014, 2015 and 2016 Annual Reports filed with the Office.

<u>Date per 2013 Annual Report</u>	<u>2013 Date Meeting Held</u>	<u>Date per 2014 Annual Report</u>	<u>2014 Date Meeting Held</u>
1/29/13	1/25/13	1/27/14	1/31/14
4/15/16	5/31/13	4/28/14	5/02/14
7/29/13	7/26/13	7/28/14	7/25/14
10/28/13	10/25/13	10/22/14	10/31/14



<u>Date per 2015 Annual Report</u>	<u>2015 Date Meeting Held</u>	<u>Date per 2016 Annual Report</u>	<u>2016 Date Meeting Held</u>
3/24/15	1/30/15	3/22/16	1/29/16
6/23/15	4/24/15	6/21/16	4/22/16
9/22/15	7/31/15	9/20/16	7/29/16
12/15/15	10/30/15	12/13/16	10/28/16

Finding 2:

Section 651.085(4), Florida Statutes, provides in pertinent part that at a quarterly meeting with the residents prior to the implementation of any increase in the monthly maintenance fee, the designated representative of the provider must provide the reasons, by department cost centers, for any increase in the fee that exceeds the most recently published Consumer Price Index for All Urban Consumers, all items, Class A Areas of the Southern Region.

For the years 2013, 2014 and 2015, St. Mark Village failed to provide at a quarterly meeting prior to the increase in monthly maintenance fees, the reasons, by department cost center for monthly maintenance fee increases that exceeded the Consumer Price Index for All Urban Consumers, all items, Class A Areas of the Southern Region, as required by Section 651.085(1), Florida Statutes.

REQUIRED BACKGROUND INFORMATION SUBMISSION

Finding:

Rule 690-193.060(1), Florida Administrative Code, provides in pertinent part that pursuant to Section 651.022(2)(c), Florida Statutes, each person who is required to be named in an application submitted must submit: biographical statement; fingerprint card furnished by the Office, with required fees; and a financial and character report by an independent reporting company approved by the Office.

In three instances, St. Mark Village failed to submit to the Office required background information, as required by Rule 69O-193.060(1), Florida Administrative Code. In two instances, two new members to the Board of Trustees were appointed in January 2014, fingerprint cards were submitted to the Office, however, no biographical statements and financial and character reports were submitted. Both individuals subsequently resigned from the Board of Trustees in December 2015 and February 2016. In the third instance, St. Mark Village failed to submit all required background information to the Office on its current Chief Financial Officer who was hired on or about March 14, 2014.

The submission of the required background information related to the Chief Financial Officer was subsequently submitted to and received by the Office.

#### ACCESS TO RECORDS

##### Finding:

Section 651.105(1), Florida Statutes, provides in pertinent part that any provider being examined shall, upon request, give reasonable and timely access to all of its records. Records necessary to conduct the examination and determine compliance with Chapter 651, Florida Statutes, and Rule Chapter 69O-193, Florida Administrative Code were requested from St. Mark Village in accordance with Section 651.105, Florida Statutes.

In three instances, St. Mark Village failed to provide for examination documents necessary for the Office to determine compliance with applicable statutes and rules, as required by Section 651.105(1), Florida Statutes. Specifically, St. Mark Village did not maintain adequate examination records and thus failed to make available for examination one executed continuing care contract and two resident notices of contract cancelations.

## **MINIMUM LIQUID RESERVE**

As of December 31, 2016, St. Mark Village's Minimum Liquid Reserve (MLR) was funded in accordance with Section 651.035, Florida Statutes.

## **SUMMARY OF RECOMMENDATIONS**

### **CANCELATION AND REFUNDS**

The Office recommends St. Mark Village: review the refund amount; issue any additional refund to the resident, their estate, or assigns, if applicable, and provide to the Office documentation of the recalculated refund amount and any additional refund payment within 30 days of the issuance of the Final Report of Examination.

### **REQUIRED ESCROW DEPOSITS OR WAIVERS**

The Office recommends St. Mark Village establish adequate procedures and controls to ensure that during the seven-day rescission period of the continuing care contract resident funds are timely deposited and held in the escrow account or obtain authorization from the resident to hold and not deposit the check for the seven-day rescission period of the contract, in accordance with the provisions of Section 651.055(2), Florida Statutes.

### **REQUIRED DISCLOSURES**

Finding 1. The Office recommends St. Mark Village establish adequate procedures and controls to ensure that prior to the transfer of any money or other property to the provider a signed and dated statement is secured from each party to the contract, certifying that a copy of the contract was received.

Finding 2. The Office recommends St. Mark Village establish adequate procedures and controls to ensure all prospective residents and/or their legal representatives are provided the required disclosure documents prior to entering into a continuing care contract, and obtain documentation to substantiate compliance.

Finding 3. The Office recommends St. Mark Village: review its current disclosure documents to ensure compliance with Section 651.091(3), Florida Statutes; amend the disclosures, if needed; and file with the Office a true and complete copy of the full disclosure document before use.

#### NEW FINANCING, ADDITIONAL FINANCING, OR REFINANCING

The Office recommends St. Mark Village establish adequate procedures and controls to ensure that all notifications and executed documents related to new financing, additional financing or refinancing are timely and properly submitted to the Office, as required by Section 651.019, Florida Statutes.

#### QUARTERLY MEETINGS WITH RESIDENTS

Finding 1. The Office recommends St. Mark Village establish adequate procedures and controls to ensure the actual dates on which the quarterly meetings with residents are held are accurately reported in the Annual Reports filed with the Office.

Finding 2. The Office recommends St. Mark Village establish adequate procedures and controls to ensure quarterly resident meetings are held in full compliance with Section 651.085, Florida Statutes, to include, the reasons, by department cost centers, for any increase in the fee that exceeds the most recently published Consumer Price Index for All Urban Consumers, all items, Class A Areas of the Southern Region.

#### REQUIRED BACKGROUND INFORMATION SUBMISSION

The Office recommends St. Mark Village establish adequate procedures and controls to ensure that any changes in governing body are timely reported to the Office and all required background information is timely submitted, as required.

### ACCESS TO RECORDS

In order for the Office to determine the degree of compliance with Chapter 651, Florida Statutes, and Rule Chapter 690-193, Florida Administrative Code, the Office recommends St. Mark Village establish adequate procedures and controls to ensure complete and adequate records are properly maintained and made available to the Office for examination, as required by Section 651.105, Florida Statutes.

## CONCLUSION

This Final Report of Examination is based upon the information provided to the Office from St. Mark Village, and additional research conducted by the Office.

The following individuals from the Office of Insurance Regulation participated in the examination: Bernie L. Stoffel, Senior Management Analyst Supervisor; Alicia Thompkins-Perryman, APIR, Reinsurance Financial Specialist; Hannah Scott, Insurance Analyst II; and Lisa M. Parker, ASA, MAAA, APIR, Actuary.

Respectfully submitted,



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Florida Office of Insurance Regulation